

Report Regarding
Single Family Vacation Rentals
On Kauai: Facilitated Meeting Series

July 16, 2005

OVERVIEW OF REPORT

Background

In December 2004, discussions concerning a proposed ordinance addressing Single Family Vacation Rentals brought together a group of people from various viewpoints and interests who initiated and planned a series of meetings to discuss the issue. With support from the County of Kauai five public televised meetings were held beginning on April 8, 2005. The meeting series offered a new way to share information, examine data, hear from presenters, clarify information and assumptions, and explore possible strategies. A Stakeholder Group (Stakeholders) representing a range of viewpoints and interests comprised the meeting panelists. The final meeting was held on July 16, 2005.

Assumptions & Consensus¹

The Stakeholders agreed on the following assumptions:

1. The discussion refers to new SFVRs, not bed & breakfast operations.
2. The discussion is not about amending the Visitor Destination Areas.
3. The discussion is not about SFVRs in the State Conservation District or Agriculture-zoned lands.
4. County Attorney's office opinion that states, "...under the current provisions of the Comprehensive Zoning Ordinance, single-family vacation rentals in non-VDA areas are not illegal."

The Stakeholders reached consensus that:

1. All SFVR units inside & outside VDAs should be required to register.
2. There needs to be regulation beyond registration for SFVRs outside the VDA.
3. Pre-existing legitimate SFVRs should be established as non-conforming uses (i.e., "Grandfathering").
4. There should be a percentage cap on SFVRs outside of VDAs.
5. Assuming that there is an island-wide cap, it should be 10%
6. If there is grandfathering, "legal pre-existing use" should be defined as timely payment (paid when due) of GET, TAT and compliance with all federal, state, and county laws.

Meeting Series Results

The Stakeholders followed a Decision Tree and answered questions that are summarized below. The Stakeholders believe the decision makers will find value in the compilation of thoughts and opinions that accompany the responses to the questions. The questions, discussion, and levels of support for the questions are in Attachment A.

1. Should all new SFVRs be banned outside of VDAs?
2. Should there be a percentage cap on SFVRs outside VDAs?
3. Should the percentage cap be island-wide or differ between neighborhoods?

¹ The Stakeholder Group agreed to strive to make decisions by consensus. It defined different levels of agreement as (1) Agree (unqualified "Yes"); (2) Agree, but . . . Decision perfectly acceptable); (3) Ok, (can live with the decision); (4) Not ok, but won't block decision (Don't fully agree with it); (5) Don't agree with decision (Can't live with it, will block). Therefore, if any member was a "5," there was no consensus.

4. If there is an island-wide cap, what should it be?
5. Assuming there is a cap, should new SFVRs be allowed by lottery or use permit?
6. If there is grandfathering, how should “legal pre-existing use” be defined?
7. If there is grandfathering, what is the time limit to qualify?
8. If there is grandfathering, how is “active use” defined?
9. If there is grandfathering, what happens upon re-sale?

INTRODUCTION

Vacation rentals had been an issue of discussion for a number of years, when finally, a series of events brought the controversy into a more public forum:

- the General Plan (November 2000) recommended that the County “*shall enact clear standards and permit processes for regulating alternative visitor accommodation structures and operations in Residential, Agriculture, Open, and Resort zoning Districts;*”
- the Planning Department, in response to the recommendation in the General Plan, hired a consultant to study, prepare a report, and draft an ordinance to regulate vacation rentals;
- a well-attended and intense *Ka Leo*-sponsored meeting was held in Hanalei on the topic and two (2) informative meetings were held in Kekaha; and,
- Council Members Jay Furfaro and JoAnn Yukimura had prepared a draft bill to address the issue of vacation rentals outside Visitor Destination Areas.

In response to these events, and with support from Jay Furfaro, JoAnn Yukimura, and Ian Costa, a group of citizens representing various viewpoints and interests began discussions relating to Single Family Vacation Rentals (SFVRs) on Kauai.

Those discussions evolved into a meeting series that provided attendees and the public with an opportunity to publicly address issues related to SFVRs and to work together on the issue in the best interest of Kauai. The meeting series offered a forum and a new way to share information, examine data, hear from presenters, clarify information and assumptions, and explore possible strategies.

This report and attachments summarize the information and documents that were compiled, and the meeting series process and results.

BACKGROUND

Louis Abrams, Caren Diamond, Council Member Furfaro, Lucy Kawaihalau, Bruce Pleas, Barbara Robeson, and Council Member Yukimura, later called the Design Committee, first met in early December 2004. They were later joined by Planning Director Ian Costa. They came together because they were all involved in discussions with their respective constituencies about SFVRs, and were aware that a bill concerning SFVRs might soon be introduced before the County Council. They also shared a

common belief that by bringing people together, good information could be elicited that would aid decision-makers to formulate the best possible regulations (if any).

They then contacted the Hawaii State Judiciary's Center for Alternative Dispute Resolution (Center) and the Center agreed to facilitate the process. Thereafter, meetings were held by videoconference and telephone conference to formulate a plan and process for a three-meeting series.

A significant amount of work went into planning the process. It became clear at the onset of the process that it was important to have the support of the County administration. Mayor Bryan Baptiste and Planning Director Ian Costa were supportive, allocated funds and/or other resources to the planning process, and hosted the meeting series. The County Council supported the concept with reservations (by a 4 to 3 vote).

It was clear that it would be essential to involve as many different viewpoints as possible and input from the public. As it met to plan the meeting process, different interests were identified that should be included on the Stakeholder Group and meetings were planned to maximize opportunities for public input.

There were at least 22 planning meetings by the Design Committee before the first public meeting. Those planning meetings lasted approximately two hours each. A significant amount of work was completed between meetings as well – working on drafts of documents and sub-committee assignments. Hundreds of email messages were exchanged. A conservative estimate of about 500 person-hours was spent developing the meeting process.

The Design Committee proposed to Mayor Baptiste that a series of three meetings be held. The first meeting would concentrate on defining the issue, the second meeting would focus on drafting possible strategies, and the third meeting would concentrate on next steps. The following community members made up the Stakeholder Group and attended at least one of the meetings:

Louis Abrams (Lawai, vacation rental manager/real estate, does not own a vacation rental)

Hilary Chandler (Kilauea, youth advocate at Hale Kipa, part-time women's advocate at YWCA, refurbishes interiors of vacation rentals)

Planning Director Ian Costa (lives in Kapaa with roots in Hanalei, architect, does not own a vacation rental)

Linda Faye Collins (Waimea, represents the hotel industry, president of Kikiaola Land Company, which owns a hotel in Waimea in a VDA and a vacation rental in Hanalei)

Caren Diamond (Haena, does not own or operate vacation rentals and has no economic interest)

Council Member Jay Furfaro²

David Helela

Lucy Kawaihalau (Wailua, vacation rental manager (for 29 years), does not own a vacation rental)

Chris Kobayashi (Hanalei, farmer, family owns vacation rentals since 1960s, and it helps to pay the taxes and family chooses to keep properties in the family)(sharing a stakeholder position with Gary Smith)

Koral McCarthy (North Shore, student, voice for the younger generation growing up on Kauai, does not own a vacation rental) (sharing a stakeholder position with Leah Sausen)

Cheryl Lovell Obatake (Kalapaki, kuleana lands (land awarded 6 - 7 generations ago), with many state and committees (e.g., watershed & Burial Council), cultural representative)

Michael and Karen Olanolan

Bruce Pleas (Kekaha, self-employed in the surfboard industry, came into this from the Kaleo o Kauai series, does not own/operate a vacation rental and has minimal benefits at this time)

Barbara Robeson (Wainiha, community interest, does not own/operate a vacation rental and has no economic interest)

Leah Sausen (North Shore, student, represents the younger generation, no economic interests) (sharing a stakeholder position with Koral McCarthy)

Gary Smith (Kilauea, president of Mokihana Pest Control, Inc.)

Joanne Watanabe (Kekaha, born and raised on Kauai, member of Kauaian Days and Kauai 2020 Vision, does not have a vacation rental)

Council Member JoAnn Yukimura (North Shore, with roots in Lihue and Hanamaulu, does not own a vacation rental)

The process included a commitment to keeping the public informed about the process and the issue. It used various methods to share information, including radio, television, print

² Council Member Furfaro stepped down to let another stakeholder representing the visitor industry have an opportunity to participate in the process.

media, the County website, by sending letters and emails, person-to-person, and the like. Agendas were prepared for each meeting, with time set aside for public input and for the Stakeholder Group to discuss issues. The principles of doing what was in the “best interest of Kauai” and maintaining an appropriate “balance” in communities were essential elements. The intent of the meetings was twofold: (1) to gather information relevant to the topic of SFVRs, and (2) to forward the information and meeting results to the Planning Commission (through the Planning Department) and ultimately to the County Council for action and/or final decision with respect to an ordinance regulating SFVRs.

MEETING SERIES

The first meeting involving the public was held on April 8, 2005, from 1:00 – 7:00 p.m. at the Planning Commission Meeting Room. It was recorded on Hoiike (with captions). The purpose of this meeting was to hear from presenters, understand the planning and legal framework, and to define issues.

Ground rules were adopted by the Stakeholder Group at the start of the meeting process, as seen in Attachment B. One of the ground rules was that the Stakeholder Group would strive to make decisions by consensus. They decided to adopt the following levels of agreement:

- (1) Agree (unqualified “yes”)
- (2) Agree, but . . . (decision perfectly acceptable)
- (3) OK (can live with the decision)
- (4) Not OK, but won’t block decision (don’t fully agree with it)
- (5) Don’t agree with decision (can’t live with it, will block)

The Stakeholder Group and the public were informed that the Planning Department has not regulated vacation rentals, does not distinguish between single and multiple family homes, and retained Scott Ezer, a Planner with Helber Hastert & Fee Planners, to analyze and gather information concerning vacation rentals, Bed and Breakfasts, and to make a recommendation about next steps. The Group identified areas of concern, terminology which required clarity, and data that needed to be collected. It also discussed using empirical and anecdotal data to examine the impacts of vacation rentals.

Presentations were made by John Knox on the Social/Economic Impact of Transient Vacation Rentals, Ken Stokes on the Vacation Rentals on Kauai: A Comparative Analysis of the Geographic and Economic Footprint, Louis Abrams on the topic of economic/cash flow of the purchase of a vacation rental named Poipu Paradise and Scott Ezer, the consultant to the Planning Department on how other counties addressed the SFVR issue. The meeting summary for the first meeting can be found in Attachment C.

The second meeting was held on May 21, 2005, from 2:00 – 5:00 p.m. at the Planning Commission Meeting Room. It was also recorded on Hoiike (with captions). In the

second meeting the consultant presented his preliminary draft report. The Stakeholder Group prioritized issues. The meeting summary is attached as Attachment D.

The third meeting was held on May 23, 2005, from 4:00 – 7:00 p.m., at the Kauai War Memorial Convention Hall Ballroom. This meeting was recorded on Hoiike (with captions). The intent of this meeting was to identify specific strategies about SFVRs and check on the levels of agreement on those strategies. The Stakeholder Group reached consensus on the following:

- All SFVR units inside & outside VDAs should be required to register.
- There needs to be regulation beyond registration for SFVRs outside the VDA.
- Pre-existing legitimate SFVRs should be established as non-conforming uses (i.e., “Grandfathering”).

A summary of this meeting can be found in Attachment E.

The Stakeholder Group realized it needed more time to complete the tasks that it had wanted to achieve at the third meeting, and the group requested that Mayor Baptiste authorize further meetings in order for it to complete its work. Mayor Baptiste authorized and funded two additional meetings. Planning Director Ian Costa continued to be actively involved and his support was key to the success of the process.

Following the first meeting in April 2005, at least another 21 planning meetings by the Design Group were held, for a total of approximately 600 person-hours. One major task was to develop a concise list of questions to keep the process focused.

Ultimately, a decision tree diagram and nine questions that corresponded to the decision tree were developed, and a process for responding to those questions. The Decision Tree Diagram (Attachment F) and the corresponding Decision Tree Agenda can be found in Attachment G. A nonexclusive list of pros and cons for the questions was also developed and can be found in part of Attachment G.

RESULTS

The fourth meeting was held on July 6, 2005, from 9:00 – 3:00 p.m., at the Planning Commission Meeting Room. This meeting was recorded on Hoiike (with captions). The Stakeholder Group shared their thoughts and indicated their level of support for the following nine questions raised on the Decision Tree Agenda:

- Should all new SFVRs be banned outside of VDAs?
- Should there be a percentage cap on SFVRs outside VDAs?
- Should the percentage cap be island-wide or differ between neighborhoods?
- If there is an island-wide cap, what should it be?
- Assuming there is a cap, should new SFVRs be allowed by lottery or use permit?
- If there is grandfathering, how should “legal pre-existing use” be defined?
- If there is grandfathering, what is the time limit to qualify?
- If there is grandfathering, how is “active use” defined?
- If there is grandfathering, what happens upon re-sale?

The questions, discussion and resulting levels of support for each of the questions are found in Attachment A.

A summary of this meeting is attached as Attachment H. The format of the meeting followed the Decision Tree Diagram and Decision Tree Agenda. The questions, discussion, and levels of support for the questions are found in Attachment A.

Between the fourth and fifth meetings, a subgroup developed a draft report for review and concurrence by the Stakeholder Group on July 16, 2005. This draft report was sent to all stakeholders for review and also made available to the public via the county website. Additionally, it was available by contacting the County Planning Department or the facilitators.

The fifth and final meeting was held on July 16, 2005, starting at 2:00 p.m. at the Planning Commission Meeting Room. The purpose of this meeting was to finalize the report for submission to the Planning Department, Planning Commission, and the County Council to provide decision-makers with as much information and insight as possible to enable them to draft the best possible ordinance.

Throughout the meeting series process, the Stakeholder Group solicited comments from the public. There were several ways in which members of the public could make their comments known: verbally at the meetings (in which case they were recorded on Hoihe and noted in the meeting summary), via email, fax, and written comments to the facilitators, and via written comments and evaluations at the meetings. Written, email and fax comments can be found in Attachment I. Titles of documents that were posted on the County web site are compiled in Attachment J.

The Stakeholder Group recognized that many important issues were raised in the meetings and in the written comments received from the public. Additionally, many important issues were raised in the meeting that were related to SFVRs and were not part of the main discussion and were outside the focus of this process. Therefore, they were separated out and compiled on another list that is included as Attachment K, for future consideration.

NEXT STEPS

After approval by the Stakeholder Group, this report will be transmitted to the Planning Department, the Planning Commission, and the Kauai County Council for their consideration. The Stakeholder Group appreciates the opportunity to have participated in this unique governance process.

List of Attachments

Attachment A	Questions, Discussion, and Levels of Support re Decision Tree Agenda (including summary)
Attachment B	Meeting Process Ground Rules
Attachment C	April 8, 2005 Meeting Summary
Attachment D	May 21, 2005 Meeting Summary
Attachment E	May 23, 2005 Meeting Summary
Attachment F	Decision Tree Diagram
Attachment G	Decision Tree Agenda (with nonexclusive list of pros and cons)
Attachment H	July 6, 2005 Meeting Summary
Attachment I	Compilation of Comments from the Public
Attachment J	Titles of Documents Posted on the County Web Site
Attachment K	List of Other Important Issues Related to SFVRs